No. 85-1630

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In the Supreme Court of the United States

OCTOBER TERM, 1986

LOWELL D. HEWITT, ET AL., PETITIONERS

v.

AARON HELMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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TABLE OF CONTENTS

	Page
Interest of the United States	1
Statute involved	2
Statement	2
Summary of argument	5
Argument:	
I. Some form of relief must be obtained in order to establish prevailing party status for purposes of an entitlement to a fee award	7
II. Respondent obtained no relief adequate to justify identifying him as a "prevailing party" under 42 U.S.C. 1988	14
Conclusion	20

TABLE OF AUTHORITIES

Cases:

Ameron, Inc. v. *United States Army Corps of Engineers*, 787 F.2d 875	17
Ashcroft v. *Mattis*, 431 U.S. 171	16, 17
Aspira of New York, Inc. v. *Board of Education*, 65 F.R.D. 541	8
Best v. *Boswell*, 696 F.2d 1282, cert. denied, 464 U.S. 828	16
Carbalan v. *Vaughan*, 760 F.2d 662	11, 12
Chinese for Affirmative Action v. *Lequennec*, 580 F.2d 1006, cert. denied, 439 U.S. 1129	10
Fast v. *School District*, 728 F.2d 1030	16
Golden v. *Zwickler*, 394 U.S. 103	16
Hanrahan v. *Hampton*, 446 U.S. 754	6, 9, 15
Harrington v. *Vandalia-Butler Board of Education*, 585 F.2d 192, cert. denied, 441 U.S. 932	11
Hensley v. *Eckerhart*, 461 U.S. 424	1, 9, 16
Illinois v. *Gates*, 462 U.S. 213	12
Kentucky v. *Graham*, No. 84-849 (June 28, 1985)	9, 10, 19
Kentucky Ass'n for Retarded Citizens v. *Connecticut*, 718 F.2d 182	16
Kopet v. *Esquire Realty Co.*, 523 F.2d 1005	8
City of Los Angeles v. *Lyons*, 461 U.S. 95	16
Mantolete v. *Bolger*, 791 F.2d 784	10

Cases—Continued: Page

Mazanec v. *North Judson-San Pierce School Corp.*, No. 85-2977 (7th Cir. Aug. 12, 1986) 11
Nadeau v. *Helgemoe*, 581 F.2d 275 9
National Center for Immigration Rights, Inc. v. *INS*, 743 F.2d 1365 17
Newman v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400 .. 13
Parham v. *Southwestern Bell Telephone Co.*, 433 F.2d 421 8
Richards v. *Griffith Rubber Mills*, 300 F. Supp. 338 ..... 8, 11
Riverside v. *Rivera*, No. 85-224 (June 27, 1986) 6, 13
Ruckelshaus v. *Sierra Club*, 463 U.S. 680 10
Superintendent, Massachusetts Correctional Institution v. *Hill*, No. 84-438 (June 17, 1985) 12
Taylor v. *Sterrett*, 640 F.2d 663 10
Thomas v. *Honeybrook Mines, Inc.*, 428 F.2d 981 8
Ward v. *County of San Diego*, 783 F.2d 1385 10

Constitution, statutes and rule:

U.S. Const.:
Art. III 6, 13
Amend. XIV, § 1 (Due Process Clause) 3
Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988 ..... 1, 2, 4, 5, 7, 8, 10, 11
Equal Access of Justice Act, 28 U.S.C. 2412(d) 1, 14
42 U.S.C. 2000e-5 1
Fed. R. Civ. P. 23 17

Miscellaneous:

S. Rep. 84-1011, 94th Cong., 2d Sess. (1976) 8
H.R. Rep. 94-1558, 94th Cong. 2d Ses. (1976) 13
Pa. Bureau of Correction Administrative Directive 801 (May 1, 1984) 4, 7, 18

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INTEREST OF THE UNITED STATES

This case presents an important question concerning the interpretation of the term "prevailing party", to whom fees may properly be awarded under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988. A finding that a litigant is a "prevailing party" similarly triggers eligibility for awards of attorneys' fees against the United States under other fee statutes, such as 28 U.S.C. 2412(d) (the Equal Access to Justice Act) and 42 U.S.C. 2000e-5 (Title VII). Since this Court has in another context indicated that the standards it enunciates under 42 U.S.C. 1988 may be "generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party,' " *Hensley* v. *Eckerhart,* 461 U.S. 424, 433 n. 7 (1983), the United States has an interest in ensuring that "prevailing party" status is limited to those situtations intended by Congress.

STATUTE INVOLVED

42 U.S.C. 1988 provides in pertinent part:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 *et seq.*], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*], the court, in its discretion, may allow the prevailing partly, other than the United States, a reasonable attorney's fee as part of the costs.

STATEMENT

On July 26, 1979, respondent Aaron Helms, then a state prisoner in Pennsylvania, brought this civil rights action in federal court. In his complaint, respondent alleged that state prison officials had violated his constitutional due process rights in three discrete ways: (1) by detaining him in administrative segregation status at the prison pending completion of an investigation into allegations of misconduct, (2) by finding him guilty of the misconduct charge on the basis of information from an "alleged informant" and (3) by holding him thereafter in restricted custody (J.A. 18a-19a). Respondent sought declaratory and injunctive relief (including the expungement of the misconduct determination from his prison record) in his individual capacity, along with damages, costs, attorney's fees and "such other relief as may be necessary and proper" (J.A. 19a-21a). The complaint did not, directly or by implication, assert that it was a class action, or contain any claim for class-wide relief (J.A. 7a-21a).

On February 20, 1980, respondent was paroled from prison. Nevertheless, (presumably because the claim for damages was not affected by his release from prison), on August 15, 1980, the district court reached the merits of his claims and granted summary judgment in favor of the

prison officials.[1] The district court held that no due process interest was implicated by respondent's confinement in administrative custody, that state officials had complied in all respect with state law, and that the prison hearing committee's reliance upon information secured from an unidentified informant was not improper. On appeal, the court of appeals reversed. *Helms* v. *Hewitt (Helms I)*, 655 F.2d 487 (1981). It held: (1) that respondent's segregation and continuation in administrative custody infringed a protected liberty interest and that summary judgment was improper because he was entitled to an opportunity to show that he was not given the prompt hearing that was due (*id.* at 498-500) and (2) that the determination of misconduct based on information received from an unidentified informant violated due process (*id.* at 501-503). The court of appeals left the issue of official immunity to the district court on remand (*id.* at 503). Prior to remand, however, this Court granted review to consider the extent to which the state's transfer of the respondent to administrative custody implicated the Due Process Clause. 455 U.S. 999 (1982). The certiorari petition presented no question relating to the use of informant testimony in the misconduct determination. This Court reversed the judgment of the court of appeals, holding that although respondent had a liberty interest protectible under the Due Process Clause, the State had accorded him all the process that was due. 459 U.S. 460 (1983).

On remand from this Court, the court of appeals directed the district court to conduct further proceedings consistent with the judgment in *Helms I* regarding respondent's claim relating to the use of informant

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[1] The district court's opinion is summarized at 655 F.2d 487, 492 (1981).

testimony. 712 F.2d 48 (1983). On remand from the court of appeals, the district court found that the prison officials were immune from damages (J.A. 22a-47a). Respondent did not pursue requests for either declaratory or injunctive relief, and the district court entered judgment in favor of the state officials (J.A. 48a). Respondent again appealed, pressing not only his claim for damages but also reasserting his expungement claim. The state supported the judgment below on alternative grounds, arguing that the claims for declaratory and injunctive relief had been waived by the failure to raise them on remand, and also that they were moot because of respondent's release from prison. The court of appeals affirmed without opinion. 745 F.2d 46 (1984).

In 1985, the district court denied respondent's application for attorney's fees under 42 U.S.C. 1988, finding that he was not a prevailing party because he obtained no relief or benefit from the litigation (Pet. App. 27a-40a). The court of appeals reversed (780 F.2d 367 (1986); Pet. App. 3a-26a), holding that respondent was entitled to attorney's fees on either of two theories. First, the court ruled that respondent had in fact obtained judicial relief, notwithstanding that immunity has precluded him from recovering damages and that he had received no injunctive relief. Referring to its merits decision in *Helms I,* the court of appeals reasoned that it had "declared that plaintiff's due process rights were violated" by use of the informant's report, and that this "declaration is a form of judicial relief which serves to affirm the plaintiff's assertion that the defendants' actions were unconstitutional and which will serve as a standard of conduct to guide prison officials in the future" (Pet. App. 18a-19a). Second, the court noted that in 1984, after the district court's ultimate judgment denying relief but prior to that judgment's affirmance by the Third Circuit, the Pennsylvania Bureau of Correction issued an amended regulation known as "Ad-

ministrative Directive 801: Inmate Disciplinary Procedures," which established, for the first time, procedures for the use of confidential source information in the course of prison disciplinary proceedings throughout the state (J.A. 85a-116a). The court of appeals observed that the litigation might have been a catalyst for the state's adoption of those procedures, and remanded the case to the district court for a factual determination as to whether the litigation had indeed been the catalyst for this procedural reform and for calculation of the fee award (Pet. App. 21a-24a). The court of appeals stated that although respondent had not requested any such procedural reform, "it must be said that plaintiff's complaint contemplated a modification in the treatment of all prisoners subject to disciplinary actions based on information obtained from confidential informants" (*id.* at 22a-23a). The court did not address the fact that respondent did not benefit from the reforms, because he had been released from prison four years before they were adopted.

Petitioners sought review in this Court, which granted certiorari to consider the question whether respondent was a prevailing party under the Civil Rights Attorney's Fees Awards Act, even though his release from prison in 1980 mooted his request for declaratory and injunctive relief and his claim for damages was precluded on grounds of immunity.

SUMMARY OF ARGUMENT

Only a "prevailing party" may be awarded attorney's fees under 42 U.S.C. 1988. The legislative history of this provision shows that a party may be considered to have prevailed if he achieves practical benefits from his suit even though there is no formal adjudication of entitlement to relief. But this Court's cases confirm that *some* benefit to the litigant himself is necessary before he can be considered to have prevailed. Thus, interim procedural vic-

tories do not justify an interim fee award in the absence of "some relief on the merits of [the] claims." *Hanrahan* v. *Hampton,* 446 U.S. 754, 757 (1980). Several courts of appeals have concluded that a favorable ruling on a legal principle, coupled with the denial of injunctive, declaratory and damages relief, does not qualify a litigant as a "prevailing party" eligible for an award of attorney's fees.

Sound policy supports this conclusion. If a favorable ruling on a legal principle provides a sufficient basis for an award of attorney's fees, the opposing party will be impelled to raise all such rulings on appeal, whether they are dispositive or not, or face the possibility that they may ultimately provide the basis for the award of a substantial attorney's fee. Correspondingly, the appellate courts would be required to reach the merits of such otherwise superfluous issues—either in reviewing the case on the merits or in the context of the fee litigation. Fee award controversies would thus create a major loophole in Article III's stricture against advisory opinions. Moreover, the increased burden of litigation would be felt by trial, as well as appellate, courts, because the filing of suits to establish "important legal principles" would be encouraged, regardless of the merits of the individual claims involved. This fostering of litigation to test abstract legal propositions is, of course, inconsistent with the policies underlying the Article III case-or-controversy requirement. Nothing in *Riverside* v. *Rivera,* No. 85-224 (June 27, 1986), or the "private attorney general" theory on which it is based, is inconsistent with our submission. Although an award of attorney's fees is appropriate to encourage litigation that serves important social goals by providing benefits to others *as well as* the litigant, the "private attorney general" rationale does not justify an award of fees to a party whose law suit serves *only* the interests of nonparties.

Respondent achieved no benefit from this litigation. Contrary to the suggestion of the court below, *Helms I* did not grant the functional equivalent of a declaratory judgment, which would in any event have been inappropriate because respondent's release from confinement prior to the district court's decision rendered his request for declaratory relief moot. Nor is this case the equivalent of a class action, in which the claims of the class survived. Both the complaint and the decisions on the merits focused solely on respondent's own individual grievances—there was no attempt to show that the treatment he received was in any way typical of the treatment accorded others, and neither the district court nor the court of appeals so held. Accordingly, the courts had no authority to award class-wide relief. It is true that the state's decision to issue Administrative Directive 801 may have benefited inmates confined in the state correctional institutions generally. That Directive, however, had no effect on respondent's suit and was not otherwise sufficiently related to it to make him eligible for attorney's fees as a "prevailing party."

ARGUMENT

I. SOME FORM OF RELIEF MUST BE OBTAINED IN ORDER TO ESTABLISH PREVAILING PARTY STATUS FOR PURPOSES OF AN ENTITLEMENT TO A FEE AWARD

42 U.S.C. 1988 gives a court discretion to allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. Thus, before any award of attorney's fees can be made, the plaintiff must show that he has obtained the status of a "prevailing party." Respondent simply did not prevail: he obtained no relief at all as a result of his suit, because the defendants were immune from damages and he had been released from prison before his case was adjudicated.

1. The legislative history of 42 U.S.C. 1988 and the decisions of this Court and of the courts of appeals strongly support the conclusion that a litigant is not a "prevailing party" unless he receives some benefit as a result of the litigation.

a. The legislative history of the Civil Rights Attorneys' Fees Awards Act, which amended 42 U.S.C. 1988 to permit the award of attorney's fees to the prevailing party, made it clear that the standards for awarding fees under 42 U.S.C. 1988 are to be "generally the same as under the fee provisions of the 1964 Civil Rights Act", and specifically noted that, under that Act, "parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief." S. Rep. 94-1011, 94th Cong. 2d Sess. 4-5 (1976). The context of that statement, as well as the cases cited in support of it,[2] show that while it is not necessary for fee eligibility to obtain *formal* relief, some practical relief on the merits must result, through either settlement, a consent decree, or voluntary action by the defendant.[3]

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[2] *Thomas* v. *Honeybrook Mines, Inc.*, 428 F.2d 981 (3d Cir. 1970) (intervenors' action triggered various judgments, agreements, and settlements); *Parham* v. *Southwestern Bell Telephone Co.*, 433 F.2d 421 (8th Cir. 1970) (suit prompted company to take action implementing fair employment policies); *Kopet* v. *Esquire Realty Co.*, 523 F.2d 1005 (2d Cir. 1975) (summary judgment on securities laws claims resulted in release of certified financial statements for the first time); *Richards* v. *Griffith Rubber Mills*, 300 F. Supp. 338 (D. Ore. 1969) (after filing suit plaintiff obtained position sought); *Aspira of New York, Inc.* v. *Board of Education*, 65 F.R.D. 541 (S.D.N.Y. 1975) (consent decree).

[3] For example, if a plaintiff's claim is mooted by a defendant's remedial action, the plaintiff would be entitled to fees if the suit was the catalyst for the remedial action. This case does not involve such a situtation – the mootness here was caused by respondent's completion of his sentence, not by the later adoption of the new rules relating to informant testimony. See pp. 18-20, *infra*.

b. This Court's attorney fee decisions have reflected a similar understanding of the limits of the term "prevailing party". For example, in *Hensley* v. *Eckerhart,* 461 U.S. 424, 436 (1983), the Court emphasized that "Congress has not authorized an award of fees whenever it was reasonable for a plaintiff to bring a lawsuit * * *. [T]he most critical factor is the degree of success obtained." The Court in that case adopted the "typical formulation" for the "statutory threshold" that must be crossed before a litigant may be awarded attorney's fees under the Act: "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit" (461 U.S. at 433, quoting *Nadeau* v. *Helgemoe,* 581 F.2d 275, 278-279 (1st Cir. 1978)). Similarly, in *Hanrahan* v. *Hampton,* 446 U.S. 754 (1980), the Court emphasized that the litigant must obtain "some relief on the merits of his claim" or he will not be considered "prevailing". The Court accordingly rejected the contention that a set of procedural victories for the plaintiff—*i.e.,* a reversal of a directed verdict and reversal of certain unfavorable discovery rulings—were sufficient to convert a litigant into a "prevailing party" entitling him to interim fees. An interim substantive victory for the prisoner in this litigation—in circumstances where the claim is dismissed on immunity grounds—should carry no greater status.

Similarly, this Court refused to permit a fee award against a state government merely because a party had successfully sued a state official in his personal capacity. "Section 1988 simply does not create fee liability where merits liability is nonexistent." *Kentucky* v. *Graham,* No. 84-849, (June 28, 1985), slip op. 5 (footnote omitted). As the Court emphasized there, "[l]iability on the merits and responsiblity for fees go hand in hand; where a defendant has not been prevailed against, either because of legal

immunity or on the merits, 1988 does not authorize a fee award against that defendant." See also slip op. 9 ("fee liability runs with merits liability"). This principle is controlling here. Respondent may have successfully advanced a substantive proposition in the course of the litigation, but he lost the litigation on immunity grounds, and was entitled to no other relief because his claim was mooted by the completion of his sentence. To permit attorney's fees in these circumstances is to convert Section 1988 into a "relief fund for lawyers", a purpose that the Court has expressly disavowed in *Kentucky* v. *Graham,* slip op. 8-9.[4]

c. The substantial weight of appellate court authority also supports the proposition that the plaintiff must obtain "some relief" to trigger prevailing party status.[5] See, *e.g., Taylor* v. *Sterrett,* 640 F.2d 663, 669 (5th Cir. 1981) ("The proper focus is whether the plaintiff has been successful on the central issue as exhibited by the fact that he has acquired the primary relief sought."); *Ward* v. *County*

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[4] Even in the context of a fee statute that does not refer to the prevailing party, the Court in *Ruckelshaus* v. *Sierra Club,* 463 U.S. 680, 685 (1983), rejected the view that the plaintiffs were entitled to recover their attorney fees because their lawsuit, which they had lost, had "helped to enforce, refine and clarify the law" and "assisted the EPA in achieving its statutory goals." The Court instead reaffirmed "one consistent, established rule"—that a "successful party need not pay its unsuccessful adversary's fees".

[5] The only inconsistent appellate court precedent of which we are aware (other than the decision below) is *Mantolete* v. *Bolger,* 791 F.2d 784 (9th Cir. 1986), which involved the award of an interim fee application. The considerations in that context may be somewhat different, although we believe that the Ninth Circuit's award of fees in *Mantolete* was in error and is in conflict with Ninth Circuit precedent. See *Chinese for Affirmative Action* v. *Lequennec,* 580 F.2d 1006 (9th Cir. 1978), cert. denied, 439 U.S. 1129 (1979). The *Mantolete* case was subsequently settled, as to both the merits and attorney's fees, and thus no further review was sought.

of San Diego, 783 F.2d 1385 (9th Cir. 1986) (where plaintiff lacked standing, fact that decision contained a statement of constitutional violation would not confer prevailing party status). In *Harrington* v. *Vandalia-Butler Board of Education,* 585 F.2d 192 (6th Cir. 1978), cert. denied, 441 U.S. 932 (1979), plaintiff had, like respondent, obtained a favorable interim ruling, but ultimately obtained no relief. Harrington succeeded in obtaining a determination that the defendant Board had discriminated against her in the conditions of her employment. She failed, however, to establish that she was constructively discharged or that she was discriminated against in the salary she received; thus she was not entitled to back pay, reinstatement or injunctive relief. She was, accordingly, unable to meet the threshold test of 42 U.S.C. 1988. The court in *Harrington* emphasized: "In order to be a prevailing party, a plaintiff must have been entitled to some form of relief at the time suit was brought." 585 F.2d at 197.[6]

Similarly, in *Carbalan* v. *Vaughan,* 760 F.2d 662 (5th Cir. 1985), a jury found that the plaintiff's constitutional rights were violated, but he obtained no relief against the defendant municipal judge (on immunity grounds) or against the defendant city (because there was no vicarious liability). The court of appeals concluded that he lacked "prevailing party" status under 42 U.S.C. 1988, holding that a plaintiff cannot recover attorney's fees for the pursuit of claims on which he obtained no relief, judicial or otherwise.[7] Cf. *Mazanec* v. *North Judson-San Pierce*

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[6] Compare *Richards* v. *Griffith Rubber Mills,* 330 F. Supp. 338, 340 (D. Ore. 1969), where the employee, who had been appointed to the job after suit was filed, was not entitled to back pay or injunctive relief, but did receive an award of $250 in attorney's fees.

[7] Relying on plaintiff's proposed pretrial order in which he sought only damages, the court also rejected plaintiff's contention that his general prayer for relief in the complaint for " 'such other and further

School Corp., No. 85-2977 (7th Cir. Aug. 12, 1986) (denying attorney's fees in Section 1983 case where defendants were entitled to immunity and requests for injunctive and declaratory relief were moot).

2. We submit that permitting a litigant to receive an award of attorney's fees as a "prevailing party" regardless of whether he ultimately benefits from the litigation would have serious adverse consequences.

As a practical matter, it would burden litigants and appellate courts alike by greatly increasing the incentives to appeal unfavorable rulings on every issue in a case. In the absence of an appeal, an unfavorable ruling on a nondeterminative and unappealed issue in the litigation—here the *Helms I* holding on the use of informant testimony—could trigger a very substantial fee liability, even when, as here, the plaintiff is entitled to no other relief in the litigation.[8] A defendant would thus be impelled to pursue appeals on otherwise superfluous issues in the case, lest some legal proposition be established in the course of the litigation that ultimately results in a fee award. Conversely, plaintiffs would have an incentive to pursue appeals in an effort to establish such legal propositions even if they could not secure any relief or benefit for themselves in the litigation. Trial courts would also be seriously affected by such efforts. Indeed, in many instances the effect of such an interpretation of "prevailing party" would be to subsidize lawyers who bring lawsuits to

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relief * * * to which plaintiff may be entitled' " constituted a demand for declaratory and injunctive relief to which he was entitled under the jury verdict (760 F.2d at 665).

[8] We note that, in light of subsequent decisions of this Court, if the state had raised the informant issue in its certiorari petition and the Court had ruled on it, *Helms I* might well have been reversed on this issue also. See *Superintendent, Massachusetts Correctional Institution* v. *Hill*, No. 84-438 (June 17, 1985); *Illinois* v. *Gates*, 462 U.S. 213 (1983).

establish "important propositions" of law rather than to vindicate the rights of individual clients by securing relief for them.

Moreover, if fee awards were available for non-benefiting "prevailing" parties, appellate courts would be required, at the behest of defendents, to rule (either on direct appeal or in the course of fee litigation) on issues that there would otherwise be no need for them to reach. There is no reason to believe that Congress intended any fee award statute to work such an incursion into the stricture against advisory opinions contained in Article III of the Constitution.

3. Nothing in *Riverside* v. *Rivera,* No. 85-224 (June 27, 1986), casts the slightest doubt on the proposition that the plaintiff who brings the litigation must himself derive "some benefit" from the litigation in order to be eligible for a fee award. The plurality in *Riverside* recognized congressional intent that "a plaintiff who obtains relief in a civil rights lawsuit ' "does so not *for himself alone* but *also* as a 'private attorney general', vindicating a policy that Congress considered of the highest importance" ' " (slip op. 12 (emphasis added), quoting H.R. Rep. 94th Cong. Sess. 2 (1976), and *Newman* v. *Piggie Park Enterprises, Inc.,* 390 U.S. 400, 402 (1968)). The plurality also noted the importance of controlling fee awards, and identified various safeguards that "protect against the possibility that 1988 might produce a windfall to civil right attorneys" (slip op. 17-18). Awarding attorneys' fees for vindication of important civil rights in a case where appropriate injunctive or nominal damage relief is granted is a far cry from permitting such fees when the plaintiff himself is not entitled to any relief. Recognizing that a "private attorney general" may secure benefits to others *as well as to himself* is not the equivalent of rewarding a plaintiff for asserting the rights of non-parties with future grievances. Ignoring this crucial distinction would encourage lawyers to pay

little heed to the ultimate merits of the litigation they pursue, and to adopt as their only goal the establishment of some threshold legal principle, for which they will be rewarded irrespective of the merits of their client's own claim. Neither this Court nor Congress has extended the "private attorney general" concept to such self-appointed proxies for the interests of other persons.[9]

II. RESPONDENT OBTAINED NO RELIEF ADEQUATE TO JUSTIFY IDENTIFYING HIM AS A "PREVAILING PARTY" UNDER 42 U.S.C. 1988

1. The court of appeals did not in terms reject the proposition that some relief, judicial or otherwise, is a prerequisite to the establishment of "prevailing party" status. Instead, it characterized its holding in *Helms I* on the use of informant testimony, as a "declaration"—implying that it had been tantamount to a declaratory judgment. The court stated (Pet. App. 18a-19a, citations omitted):

> We reject the defendants' contention that plaintiff failed to obtain judicial relief. In *Helms I,* we declared that plaintiff's due process rights were violated by the prison officials' unconstitutional use of the hearsay report. * * * Our declaration acts as an important vindication of the plaintiff's rights. * * * The declaration is a form of judicial relief which serves to affirm the plaintiff's assertion that the defendants' actions were unconstitutional and which will serve as a standard of conduct to guide prison officials in the future.

a. This analysis fails for a number of reasons. In the first place, it misreads *Helms I* itself. The court there did not hold that respondent was entitled to a declaratory

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[9] Some fee statutes, such as 28 U.S.C. 2412(d) (Equal Access to Justice Act), are not in any event based on a "private attorney general" rationale.

judgment. It did rule that respondent had "suffered a denial of due process by being convicted on a misconduct charge when the only evidence offered against him was a hearsay recital, by the charging officer, of an uncorroborated report of an unidentified informant." 655 F.2d at 502. But the court, in remanding the case, directed only that "if the defendants do not establish official immunity * * * the district court should enter summary judgment for Helms on the issue whether he was denied due process in being confined in disciplinary custody" (*id.* at 502-503). Respondent thus achieved in *Helms I* no more than the type of interim procedural victory this Court found in *Hanrahan* v. *Hampton, supra,* to be insufficient to confer "prevailing party" status.

b. In the decision below the court of appeals refers (Pet. App. 17a) to the broad relief sought by respondent in his complaint, which included a request for a "declaratory judgment, declaring plaintiff's rights under the Fourteenth Amendment and 42 U.S.C. 1983 violated as more specifically set forth in this Complaint" (J.A. 19a), and asked the court to "order the reversal of the disciplinary conviction set forth in this Complaint and order it expunged from plaintiff's inmate, institutional and Bureau of Correction records" (J.A. 20a). But nothing in *Helms I* refers to those broad requests for relief. In particular, it did not direct the district court to address them on remand. In fact, the only issue presented to the district court on the remand was whether the prison officials were entitled to immunity from damages. No request for declaratory of injunctive relief was ever renewed in the district court. Futhermore, because the court of appeals affirmed the district court's immunity holding without opinion (745 F.2d at 46), no court has ever addressed respondent's claim for declaratory and injunctive relief.

c. This failure was not an oversight. Respondent had been released from prison before the initial district court decision rejecting his complaint in its entirety. Accordingly, the courts at all stages in this litigation have been precluded from granting injunctive or declaratory relief on petitioner's claims relating to his treatment while in confinement, because his release had mooted all such claims for relief. *Golden* v. *Zwickler,* 394 U.S. 103 (1969); *Ashcroft* v. *Mattis,* 431 U.S. 171, 172-173 (1977) (claim of parent who was not entitled to damages that "he will obtain emotional satisfaction from a ruling that his son's death was wrongful" not sufficient. "Emotional involvement in a lawsuit is not enough to meet the case-or-controversy requirement; were the rule otherwise, few cases could ever become moot."); cf. *City of Los Angeles* v. *Lyons,* 461 U.S. 95 (1983).[10]

d. Indeed, had the district court based its original grant of summary judgment to the petitioners on the ground of qualified immunity, rather than rejecting respondent's claims on the merits, the court of appeals would presumably simply have affirmed that ruling (as it subsequently did at 745 F.2d 46). There would in that

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[10] If these claims had not been moot, and if respondent had been found entitled to declaratory or injunctive relief, he would qualify as a "prevailing party" for the award of attorney's fees only if he had "succeed[ed] on any significant issue in [the] litigation" (*Hensley* v. *Eckerhart,* 461 U.S. 424, 433 (1983)), and the relief accorded was "significant". Compare *Best* v. *Boswell,* 696 F.2d 1282, cert. denied, 464 U.S. 828 (1983) (procedural due process violation not sufficient to trigger award of attorney's fees in suit seeking reinstatement and $1 million in damages) and *Kentucky Ass'n for Retarded Citizens* v. *Conn,* 718 F.2d 182 (6th Cir. 1983) (class action plaintiff not "prevailing party" where declaratory relief obtained was not significant part of relief sought) with *Fast* v. *School District,* 728 F.2d 1030 (8th Cir. 1984) (en banc) (plaintiff in Section 1983 civil rights action who was held constitutionally entitled to post-termination hearing but was refused reinstatement and pre-layoff hearing was "prevailing party").

event have been no occasion for the court of appeals to consider the informant issue at all. It is particularly inappropriate to assess attorney fees against the state on the basis of a ruling that has resulted only from the district court's choice of alternative grounds on which to base its judgment in favor of the state. Cf. *Ashcroft* v. *Mattis*, 431 U.S. at 172-173. The fee statutes should not be interpreted to place such a premium on the reasoning—and even the dicta—in opinions, as opposed to the judgments actually rendered.

2. Even if *Helms I* could appropriately be read as a "declaration of rights" analogous to a declaratory judgment, that declaration did not in any way benefit respondent who had already been released from prison, and thus cannot justify an award of attorney fees to him. Nor can the Third Circuit's view (Pet. App. 19a) that its "declaration" was a form of judicial relief "which will serve as a standard of conduct to guide prison officials in the future" be a basis for attorney's fees on a "private attorney general" rationale (see pp. 13-14, *supra*). The court of appeals was without authority to grant any such widespread relief in this case, which was a suit by an individual prisoner, not a class action. See, *e.g.*, *Ameron, Inc.* v. *U.S. Army Corps of Engineers*, 787 F.2d 875 (3d Cir. 1986) (petition for rehearing granted on other grounds); *National Center for Immigration Rights, Inc.* v. *INS*, 743 F.2d 1365, 1371 (9th Cir. 1984). The only "declaration of rights" that the courts could make in this case was one affecting respondent's individual rights—and at the time the court of appeals addressed the due process informant issue, respondent's claim for declaratory and injunctive relief was moot.

To view this case as the functional equivalent of a class action in order to justify the award of fees would be effectively to transform an individual lawsuit into a class action without compliance with the requirements of Fed. R. Civ.

P. 23. Moreover, the respondent's prayer for relief in this case did not request any broad change in procedures, and thus cannot reasonably be read as requesting the functional equivalent of class relief. Instead, the relief requested related solely to the status of respondent himself: he sought his own release from restrictive custody status and return to the general prison population, reversal of the individual hearing committee decision that he was guilty of assaulting a corrections officer, and expungement of that decision from his prison records (J.A. 19a-21a).

3. Although the court thus could not have ordered a general change in procedures solely because of the due process violation in this individual case, the state on its own initiative adopted Administrative Directive 801: Inmate Disciplinary Procedures (J.A. 85a-116a). This directive, effective May 1, 1984, detailed for the first time the procedures to be followed in correctional facilities throughout the state with respect to the use of confidential source information generally (J.A. 101a-102a) and thus may in fact have achieved "class-wide" benefits.[11]

We do not believe that respondent's suit can properly be said to have caused, or to have been "a catalyst for," any class-wide relief resulting from the directive, for purposes of a fee award. First of all, the adoption of the directive had no effect whatsoever on respondent's suit or the claims reflected in it—which were by then moot, except for the damage claims rejected on immunity grounds. Any

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[11] The directive, which "does not create rights in any person" (J.A. 115a), permits the use in misconduct hearings of evidence supplied by an undisclosed informant when the responsible officials determine that his identity "should remain confidential" (J.A. 101a), if the informant's reliability is established by the preponderance of the evidence (*ibid.*) Both the informant's testimony and evidence establishing his reliability may be presented in camera where necessary (J.A. 101a-102a). Since this case was decided on summary judgment, there is no indication in this record of the precise procedures utilized in repondent's misconduct hearing.

"catalyst" relationship between the suit and the directive, therefore, is basically of a suggestion-box nature, but attorney fees obviously are not available for an endeavor such as the preparation of a letter suggesting such a change. Moreover, respondent's suit cannot even be said to have made such a suggestion. Respondent did not bring this action as a class action to challenge the state's procedures in general, and this record thus does not even contain unsupported allegations about the nature of the original procedures. Indeed, respondent's complaint is inherently ambiguous: he may have alleged either that the established procedures were unconstitutional, or that he was singled out for unconstitutional adverse treatment. His decision to sue only the officials at the facility in which he was confined, not state officials who could remedy defects in state-wide procedures, as well as his decision to sue those officials in their individual as well as their official capacities (J.A. 10a), support the latter, rather than the former, interpretation and, in any event, undermine a "catalyst" basis for a fee award here. Cf. *Kentucky* v. *Graham, supra.*

Even apart from those considerations, we doubt that it would be appropriate to award respondent an attorney's fee on the basis of the state's promulgation of the directive. Respondent's complaint and the court's decision in *Helms I* both focused only on respondent's own situation. In contrast, the directive deals with the entire subject of inmate misconduct throughout the state's correctional system. It defines the kinds of activities that constitute misconduct, establishes a Hearing Committee to determine whether misconduct has occurred, provides for administrative review of the decisions of that Committee, and establishes the procedures to be followed both by the Committe and on administrative review (J.A. 85a-116a). This broad directive obviously reflects the state's experience in dealing with the entire range of prisoner

behavior in administering its correctional facilities. The relation between any particular misconduct hearing and a particular provision in the directive is likely to be tenuous at best. Moreover, the states would scarcely be encouraged to promulgate directives regularizing their methods for dealing with prisoner misconduct if such directives can trigger the award of attorney fees to former prisoners who had been subjected to the superseded procedures, even when they are no longer confined and have obtained no other relief whatever.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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